

**United States Department of Labor
Employees' Compensation Appeals Board**

C.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Houston, TX, Employer**

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**Docket No. 17-0065
Issued: March 28, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 19, 2016 appellant filed a timely appeal from a September 6, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.²

ISSUE

The issue is whether appellant met her burden of proof to establish an injury in the performance of duty on July 12, 2016.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the September 6, 2016 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

FACTUAL HISTORY

On July 14, 2016 appellant, then a 34-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 12, 2016 she sustained a lower back strain due to a motor vehicle accident which occurred while she was on her way to lunch.

In support of her claim appellant submitted a copy of the Houston Police Department Accident Information report, which was illegible. She also submitted medical evidence.

A July 12, 2016 Memorial Hermann Emergency Department report noted that appellant had been involved in a motor vehicle accident with no apparent injury. The report noted that appellant was pregnant and was instructed to see her treating physician for a follow-up visit.

In a July 13, 2016 school/work status report, Dr. Jarrod Drab, Board-certified in osteopathic medicine, diagnosed a lumbar strain and released appellant to work with restrictions effective July 18, 2016.

On July 15, 2016 Dr. David P. Gonzalez, a family practitioner, noted that appellant was pregnant, had been involved in a motor vehicle accident while on her way to lunch, and had injured her lower back. Appellant's physical examination revealed decreased lumbar range of motion and lower extremity tingling and numbness. He diagnosed lower back and pelvic contusions and low back strain. Dr. Gonzalez indicated that appellant was capable of performing restricted work.

In a July 22, 2016 Texas Workers' Compensation form, Dr. Frank J. Kromelis, a treating Board-certified internist, reported that on July 12, 2016 appellant had been involved in a motor vehicle accident while on her way to lunch. He indicated that appellant was capable of working with restrictions, which were provided.

In a letter dated August 3, 2016, OWCP noted the evidence submitted and informed appellant that the evidence was insufficient to establish that she had been in the performance of duty at the time of the July 12, 2016 incident or that she had established a medical condition. It also advised her that the Houston police report was illegible. OWCP requested that appellant complete an attached questionnaire. Appellant was afforded 30 days to provide the requested evidence.

On August 8, 2016 OWCP received a July 22, 2016 report from Dr. Kromelis. Dr. Kromelis noted that appellant was pregnant and that she had injured her lower back in a motor vehicle accident while on her way to lunch. Appellant's complaints included continuing back pain. Dr. Kromelis found no change from the July 15, 2016 examination findings. He diagnosed lower back and pelvic contusions and low back strain. Dr. Kromelis opined that appellant was capable of performing restricted work.

By decision dated September 6, 2016, OWCP denied appellant's claim. It found that she had failed to establish that she had been in the performance of duty at the time of the July 12, 2016 motor vehicle accident. OWCP explained that appellant had failed to complete the questionnaire and had failed to provide any witness statements.

LEGAL PRECEDENT

FECA provides for the payment of compensation for the disability or death of an employee resulting from a personal injury sustained while in the performance of duty.³ The phrase sustained while in the performance of duty has been interpreted by the Board to be the equivalent of the commonly found requisite in workers' compensation law of arising out of and in the course of employment. In the course of employment deals with the work setting, locale, and time of injury, whereas, arising out of the employment encompasses not only the work setting, but also the requirement that an employment factor caused the injury.⁴

To occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his master's business; (2) at a place where she may reasonably be expected to be in connection with the employment; and (3) while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.⁵

In determining whether an injury occurs in a place where the employee may reasonably be or constitutes a deviation from the course of employment, the Board will focus on the nature of the activity in which the employee was engaged and whether it is reasonably incidental to the employee's work assignment or represented such a departure from the work assignment that the employee becomes engaged in personal activities unrelated to his or her employment.⁶

Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he or she claims compensation, is causally related to the accepted injury.⁷

ANALYSIS

The Board finds that appellant has not established that the motor vehicle accident on July 12, 2016 occurred while she was in the performance of her federal employment.

It is the employee's burden of proof to submit sufficient evidence necessary for OWCP to make a determination as to whether she was in the course of federal employment at the time of the incident.⁸

³ 5 U.S.C. § 8102(a). *See also P.S.*, Docket No. 08-2216 (issued September 25, 2009).

⁴ *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *C.O.*, Docket No. 09-217 (issued October 21, 2009).

⁵ *T.F.*, Docket No. 08-1256 (issued November 12, 2008); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

⁶ *See T.C.*, Docket NO. 16-1070 (January 24, 2017).

⁷ *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ *T.S.*, Docket No. 09-2184 (issued June 9, 2010); *Ricky A. Paylor*, 57 ECAB 568 (2006).

As an off-premises employee, a letter carrier is most often out on a route when a lunch period commences.⁹ The evidence of record must therefore establish that the injury occurred at a place the employee was expected to be during the lunch break.

Appellant was provided opportunity to establish that her alleged injury occurred in the performance of duty. In its August 3, 2016 development letter, OWCP informed appellant that the information initially provided was insufficient to support her claim and that the Houston Police report was illegible. Appellant was provided a series of questions regarding the factual circumstances of the alleged incident and advised to provide details which would clarify whether the July 12, 2016 accident occurred in the performance of duty. She provided no response to the questions posed.

Other than noting that she had sustained injuries due to being involved in a motor vehicle accident on July 12, 2016 while on the way to lunch in her Form CA-1, appellant failed to provide any specific details of where and how the injury occurred so that it could be determined whether appellant's injury occurred in the performance of duty. In the absence of such evidence, OWCP properly found that appellant failed to establish an injury in the performance of duty.

As appellant has not met her burden of proof to establish performance of duty, it is not necessary to discuss the probative value of the medical reports.¹⁰

On appeal appellant provided a brief description of her claim and requested further investigation of her claim. As noted above, OWCP denied the claim because appellant failed to provide answers to the questions posed by OWCP or provide a statement or witness statements.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established an injury in the performance of duty on July 12, 2016, as alleged.

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.5(a) (August 1992).

¹⁰ *Tracey P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 6, 2016 is affirmed.

Issued: March 28, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board